Singapore Para Rubber Estate Ltd v Pentadbir Tanah Daerah Rembau, Negeri Sembilan

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 01–6 OF 2007(N)

ALAUDDIN CJ (MALAYA), HASHIM YUSOFF AND ZULKIFLI FCJJ

24 OCTOBER 2008

Constitutional Law — Right to property — Acquisition of property by government — All provisions of Land Acquisition Act 1960 complied with — Due compensation offered — Whether complaints of violation of art 13 of the Federal Constitution ought to be entertained — Land Acquisition Act 1960 — Federal Constitution art 13

Land Law — Acquisition of land — Objection against acquisition — Enlargement of time, application for — Applicant choosing to remain indifferent when capable of acquiring professional advice instantly — Whether fit and proper case for court to exercise discretion to enlarge time

Land Law — Acquisition of land — Objection against acquisition — Enlargement of time, application for — Whether burden upon applicant to establish 'special circumstances' — Whether power to enlarge time at discretion of court — Whether such power to be exercised sparingly

Land Law — Acquisition of land — Valuation of interest — Written opinion on value of land to be acquired — Whether such opinion merely to guide land administrator in assessing compensation payable — Whether land administrator obliged to accept opinions of government valuers — Land Acquisition Act 1960 s 12 proviso

The respondent intended to acquire the appellant's land pursuant to provisions of the Land Acquisition Act 1960 ('the Act'). Following the statutory enquiry for the hearing of claims to compensation on 3 July 2002, the respondent on 4 July 2002 issued Form H awarding the appellant a sum of RM898,500 for the land. The appellant informed the respondent that it was rejecting the compensation but nevertheless accepted it under protest. The appellant's own surveyor had valued the land and assessed reasonable compensation to be in the region of RM2.1m. On 6 August 2002, the

respondent sent to the appellant Form N — which was an application for objections to be referred to court — to be filled up and returned with a deposit of RM3,000. However, the respondent did not inform the appellant that Form N was to be returned within six weeks from the date of the award. Sometime in December 2002, the appellant realised that it was out of time to return Form N. Thus on 6 January 2003, the appellant applied to the High Court for an enlargement of time of two weeks, from the date of the court's order for the appellant to file Form N. The application was dismissed with costs. The appellant's appeal to the Court of Appeal was also dismissed with costs. The appellant obtained leave to refer a question for the Federal Court's determination. The question was whether the respondent's non-compliance with certain statutory requirements under the Act and art 13(1) of the Federal Constitution when making his award, constituted 'special circumstances' entitling the court to enlarge time for the submission of Form N. The appellant submitted that the respondent's award was incorrect as it was based on the government valuer's assessment of market value of the land on 19 February 2002. Market value of the land, argued counsel, should have instead been reckoned on 11 April 2002, which was the date of the *Gazette* publication under s 8 of the Act.

Held, answering the question posed in the negative and dismissing the appeal with costs:

(1) (per **Alauddin CJ (Malaya)**) The written opinion or report specified under the proviso to s 12(1) is only meant to guide the land administrator. What the land administrator is obliged to do under s 12 is to make a full enquiry into the value of the land, and as soon as possible thereafter assess the amount of compensation which is in his opinion appropriate, before making his award under s 14(1) of the Act. The land administrator is not bound to accept the valuation report prepared by the Government valuer. In the instant case, the award made by the land administrator was proper and complied with paras 1(1)(b), and 2(d) of the First Schedule to the Act (see paras 42–43 & 45).

(2) (per **Alauddin CJ (Malaya)**) The burden was upon the appellant to establish 'special circumstances' thereby entitling the court to exercise its discretion to enlarge time under s 38(4) of the Act. However, this discretion is not absolute and unqualified. It has to be exercised sparingly. In the instant case, the High Court and Court of Appeal had not erred in holding that the grounds advanced by the appellants did not constitute special circumstances (see paras 50–52).

(3) (per **Alauddin CJ (Malaya)**) This was not a case where art 13 of the Federal Constitution had been infringed. Where all the provisions of

A the Act have been complied with and due compensation is offered, land owners cannot complain of any violation of art 13 (see paras 54 & 57).

(4) (per **Alauddin CJ (Malaya)**) In the instant case, any prejudice or injustice caused to the appellant was due to its own attitude. Had the appellant remained vigilant in making the application for enlargement of time, it would have had the opportunity to ventilate its case before the High Court. The appellant here chose to be indifferent when it had the resources to acquire professional advice instantly (see paras 59–62).

(5) (per **Zulkefli FCJ** concurring) It could not be said that there was a non-compliance by the respondent of the statutory requirements under the Act in the making of the award. The so called non-compliance was in relation to the valuation report prepared by the government valuer as relied on by the respondent in which the date in determining the market value of the land to be acquired was given as at 19 February 2002 instead of 11 April 2002, the date of the *Gazette* under s 8 of the Act. The court was of the view that the written opinion or report provided under the proviso to sub-s 12(1) only acted as a guidance to the land administrator. Thus, the land administrator was not bound to accept the valuation report made by the government valuer but just as a guide in determining the award of compensation (see para 72).

(6) (per **Zulkefli FCJ** concurring) If at all there had been a non-compliance by the respondent of the statutory requirements under the Act in making the award under s 14 of the Act, this issue should have been taken up and argued at the hearing of the objection of the appellant in the reference to the High Court under s 36 of the Act. But this was not the case before the court. The true position was that the appellant had been out of time filing its application for objection to the award ie within six weeks from the date of the land administrator award was made under s 14 of the Act. The appellant in fact had already failed in the first hurdle of satisfying the High Court and the Court of Appeal of the justification to grant enlargement of time to file objection proceedings under Form N (see para 73).

Obiter: Assuming there was non-compliance of the statutory requirements under the Act, the non-compliance would not have resulted in any serious injustice or prejudice to the appellant. The difference in the date of valuation — from 19 February 2002 to 11 April 2002 — was only 52 days. In that short time, the value of the land would not have increased significantly (see para 58).

[Bahasa Malaysia summary

Responden berniat untuk memperoleh tanah perayu menurut peruntukan di bawah Akta Pemerolehan Tanah 1960 ('Akta'). Berikutan siasatan statutori

untuk pendengaran tuntutan untuk pampasan pada 3 Julai 2002, responden pada 4 Julai 2002 telah mengeluarkan Borang H dengan mengawardkan perayu sejumlah RM898,500 untuk tanah tersebut. Perayu telah memberitahu responden yang ia menolak pampasan itu tetapi menerimanya dengan bantahan. Juruukur perayu sendiri telah menilai tanah tersebut dan menaksir pampasan yang munasabah dalam lingkungan RM2.1j. Pada 6 Ogos 2002, responden telah menghantar kepada perayu Borang N — yang merupakan permohonan untuk bantahan-bantahan dirujuk ke mahkamah — untuk diisikan dan dikembalikan dengan wang pendahuluan RM3,000. Walau bagaimanapun, responden tidak memberitahu perayu yang Borang N itu perlu dikembalikan dalam tempoh enam minggu dari tarikh award. Sekitar bulan Disember 2002, perayu menyedari yang ia di luar had masa untuk mengembalikan Borang N. Oleh itu pada 6 Januari 2003, perayu memohon ke Mahkamah Tinggi untuk lanjutan masa selama dua minggu, dari tarikh perintah mahkamah untuk perayu memfailkan Borang N. Permohonan itu telah ditolak dengan kos. Rayuan perayu ke Mahkamah Rayuan juga ditolak dengan kos. Perayu memperoleh kebenaran merujuk persoalan untuk ditentukan oleh Mahkamah Persekutuan. Persoalannya adalah sama ada ketidakpatuhan responden dengan keperluan statutori tertentu di bawah Akta dan perkara 13(1) Perlembagaan Persekutuan semasa membuat awardnya membentuk 'special circumstances' yang membenarkan mahkamah melanjutkan masa untuk penyerahan Borang N. Perayu berhujah yang award responden tidak betul kerana ia berdasarkan penaksiran juruukur kerajaan untuk nilai pasaran tanah pada 19 Februari 2002. Nilai pasaran tanah itu, peguam menghujahkan, patut dikira pada 11 April 2002, yang merupakan tarikh penerbitan *Warta* di bawah s 8 Akta.

Diputuskan, menjawab persoalan yang dikemukakan secara negatif dan menolak rayuan dengan kos:

(1) (oleh **Alauddin HB (Malaya)**) Pendapat atau laporan bertulis yang ditetapkan di bawah proviso kepada s 12(1) hanya bermaksud untuk memberi panduan kepada pentadbir tanah. Apa yang pentadbir tanah perlu lakukan di bawah s 12 adalah untuk membuat siasatan penuh terhadap nilai tanah tersebut, dan dengan segera selepas itu menaksir jumlah pampasan yang pada pendapatnya adalah sesuai, sebelum membuat awardnya di bawah s 14(1) Akta. Pentadbir tanah tidak terikat untuk menerima laporan penilaian yang disediakan oleh juruukur kerajaan. Dalam kes ini, award yang dibuat oleh pentadbir tanah adalah wajar dan mematuhi perenggan 1(1)(b), dan 2(d) Jadual Pertama kepada Akta (lihat perenggan 42–43 & 45).

(2) (oleh **Alauddin HB (Malaya)**) Beban terletak kepada perayu untuk membuktikan 'special circumstances' yang membenarkan mahkamah

menggunakan budi bicaranya untuk melanjutkan masa di bawah s 38(4) Akta. Walau bagaimanapun, budi bicara ini tidak mutlak dan tanpa bersyarat. Ia perlu digunakan dengan berhati-hati. Dalam kes ini, Mahkamah Tinggi dan Mahkamah Rayuan tidak terkhilaf dalam memutuskan bahawa alasan-alasan yang dikemukakan oleh perayu tidak membentuk keadaan istimewa (lihat perenggan 50–52).

(3) (oleh **Alauddin HB (Malaya)**) Ini bukan kes di mana perkara 13 Perlembagaan Persekutuan telah dilanggar. Di mana semua peruntukan Akta telah dipatuhi dan pampasan sewajarnya telah ditawarkan, pemilik tanah tidak boleh mengadu tentang apa-apa pelanggaran perkara 13 (lihat perenggan 54 & 57).

(4) (oleh **Alauddin HB (Malaya)**) Dalam kes ini, apa-apa prejudis atau ketidakadilan yang disebabkan oleh perayu adalah akibat sikapnya sendiri. Jika perayu sentiasa berjaga-jaga dalam membuat permohonan untuk lanjutan masa, ia mempunyai peluang untuk mengemukakan kesnya di hadapan Mahkamah Tinggi. Perayu di sini memilih untuk bersikap tidak peduli apabila ia mempunyai sumber untuk mendapatkan nasihat profesional dengan segera (lihat perenggan 59–62).

(5) (oleh **Zulkefli HMP** bersetuju) Ia tidak boleh dikatakan bahawa terdapat ketidakpatuhan oleh responden terhadap keperluan statutori di bawah Akta dalam memberikan award. Ketidakpatuhan yang dikatakan adalah berkaitan dengan laporan penilaian yang disediakan oleh penilai kerajaan seperti yang disandarkan oleh responden di mana tarikh menentukan nilai pasaran tanah yang akan diperoleh diberikan setakat 19 Februari 2002 dan bukannya 11 April 2002, tarikh di dalam *Warta* di bawah s 8 Akta tersebut. Mahkamah berpendapat bahawa pendapat bertulis atau laporan yang diberikan di bawah proviso kepada sub-s 12(1) hanyalah sebagai panduan kepada pentadbir tanah. Oleh itu pentadbir tanah tidak terikat untuk menerima laporan penilai yang dibuat oleh penilai kerajaan tetapi hanya sebagai panduan dalam menentukan award pampasan (lihat perenggan 72).

(6) (oleh **Zulkefli HMP** bersetuju) Jika terdapat ketidakpatuhan oleh responden terhadap keperluan statutori di bawah Akta dalam memberikan award di bawah s 14 Akta, isu ini sepatutnya dibangkitkan dan dihujahkan semasa perbicaraan bantahan oleh perayu dalam rujukan kepada Mahkamah Tinggi di bawah s 36 Akta. Tetapi bukan ini yang berlaku di mahkamah. Kedudukan sebenarnya adalah bahawa perayu berada di luar masa untuk memfailkan bantahan terhadap award, iaitu dalam tempoh enam minggu dari tarikh award pentadbir tanah dibuat di bawah s 14 Akta. Perayu sebenarnya telahpun gagal dalam halangan pertama untuk memuaskan Mahkamah Tinggi dan

Mahkamah Rayuan bagi justifikasi untuk membenarkan lanjutan masa memfailkan prosiding bantahan di bawah Borang N (lihat perenggan 73).

Obiter: Dengan mengandaikan terdapat ketidakpatuhan keperluan statutori di bawah Akta, ketidakpatuhan itu tidak mungkin menyebabkan apa-apa ketidakadilan atau prejudis serius kepada perayu. Perbezaan tentang tarikh penilaian — dari 19 Februari 2002 hingga 11 April 2002 — hanya 52 hari. Dalam tempoh singkat itu, nilai tanah tersebut tidak mungkin bertambah dengan nyata sekali (lihat perenggan 58).]

Notes

For a case on acquisition of property by government, see 3(2) *Mallal's Digest* (4th Ed, 2006 Reissue) para 2331.

For a case on valuation of interest, see 8(2) *Mallal's Digest* (4th Ed, 2006 Reissue) para 2000.

For cases on objection against acquisition, see 8(2) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 1946–1948.

Cases referred to

Chor Phaik Har v Farlim Properties Sdn Bhd [1994] 3 MLJ 345 (refd)

Foo Loke Ying & Anor v Television Broadcasts Ltd & Ors [1985] 2 MLJ 35 (refd)

Keck Seng (M) Bhd v Pentadbir Tanah, Johor Bahru [1996] 3 CLJ 573 (refd)

Lai Tai v The Collector of Land Revenue [1960] MLJ 82 (refd)

Lau Cher Hian v Collector of Land Revenue, Muar [1971] 1 MLJ 96 (refd)

Lau Kieng Kong & Ors v Minister for Resource Planning & Anor [1994] 3 MLJ 443 (refd)

Megat Najmuddin bin Dato Seri (Dr) Megat Khas v Bank Bumiputra (M) Bhd [2002] 1 MLJ 385 (refd)

Pemungut Hasil Tanah Daerah Barat Daya (Balik Pulau) Pulau Pinang v Kam Gin Paik & Ors [1983] 2 MLJ 390 (refd)

Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v Ong Gaik Kee [1983] 2 MLJ 35 (refd)

Penang Development Corp v Collector of Land Revenue & Anor [1976] 1 MLJ 89 (refd)

Senapi bin Long dan satu yang lain lwn Pentadbir Tanah Daerah, Langkawi, Kedah [1994] 1 MLJ 459 (refd)

Sungei Bongkah Estate Sdn Bhd v Pentadbir Tanah Daerah Kuala Muda [1995] 1 CLJ 400 (refd)

Tang Sung Mooi v Too Miew Kim [1994] 3 MLJ 117 (refd)

Legislation referred to

Federal Constitution art 13, 13(1)

Land Acquisition Act 1960 ss 8, 12, 12(1), 14, 14(1), 16, 36, 37, 38, 38(1), 38(3)(a), 38(4), Forms E, H, N, First Schedule, paras 1(1)(b), 2(d)

Ghazi Ishak (Balwant Singh & Co) for the appellant.
Ishak bin Shahari (State Legal Adviser, Negeri Sembilan) for the respondent.

Alauddin CJ (Malaya):

INTRODUCTION

[1] This is an appeal against the decision of the Court of Appeal dated 23 January 2007.

[2] The Court of Appeal dismissed the appellant's appeal against the decision of the Seremban High Court (in Originating Motion No 25–2 of 2003) which refused to grant an enlargement of time under s 38(4) of the Land Acquisition Act 1960 ('the Act') to enable the appellant to file an objection under Form N pursuant to s 38(1) of the Act.

[3] On 16 July 2007, the appellant obtained leave to appeal from the Federal Court on the following question:

> Whether the non-compliance of the statutory requirements under the Land Acquisition Act 1960 ('the Act') in particular, para h 1(1)(b) and para 2(d) of the First Schedule of the Act and art 13(1) of the Federal Constitution by the Land Administrator, in making the award under s 14 of the Act, amounts to special circumstances under s 38(4) of the Act.

BACKGROUND FACTS

[4] The appellant is the registered proprietor of Lot 1322, Mukim Pedas, Daerah Rembau, Negeri Sembilan Darul Khusus held under Certificate of Title No 428.

[5] Lot 1322 constitutes part of the appellant's land which forms part of the Perhentian Tinggi Estate in Negeri Sembilan.

[6] On or about 7 June 2002, the manager of Perhentian Tinggi Estate had received a Form E (Intended Acquisition: Notice of Enquiry) dated 6 June 2002 from the respondent. According to the Form E, the proposed acquisition was for 8.094 hectares of the total size of the lot which is 71.530 hectares.

[7] As a result of the enquiry held on 3 July 2002, the respondent had

issued Form H — (Notice of Award and Offer of Compensation) dated 4 July 2002 wherein the appellant was awarded compensation amounting to RM898,500.

[8] The appellant received the offer under protest. The manager of Perhentian Tinggi Estate had also informed the respondent that the appellant objected to the compensation offer.

[9] Subsequently vide letter dated 6 August 2002, the respondent had forwarded to the appellant Form N — (an application for an objection to be referred to court) to be filled up and returned to the respondent with a deposit of RM3,000.

[10] The respondent did not at any time inform the appellant that Form N was to be returned to the respondent within six weeks from the date of the award.

[11] The appellant had appointed Messrs Khong and Jaafar to prepare a valuation report on part of Lot 1322 which was subject to the acquisition exercise.

[12] Based on the valuation report by Messrs Khong and Jaafar the reasonable compensation award would be RM2,139,302.

[13] There is a difference of RM1,240,802 between the amount of compensation awarded by the respondent (ie RM898,500) and the amount valued by Messrs Khong and Jaafar (ie RM2,139,302).

[14] In mid-December 2002, upon consultation with the appellant's solicitors Messrs Presgrave and Matthews the appellant was advised that s 38 of the Act requires Form N to be forwarded to the respondent within six weeks from the date of the respondent's award together with the deposit of RM3,000.

[15] Realising they were out of time the appellant then filed an application (dated 6 January 2003) at the Seremban High Court for an enlargement of time of two weeks from the date of the order to be given for the appellant to file Form N pursuant to s 38(1) of the Act.

THE HIGH COURT

[16] Before the High Court the grounds proferred by the appellant supporting the application are simply these:

(i) the appellant at the enquiry held by the land administrator had already made it known that the offer was unacceptable;

(ii) the appellant was not informed by the respondent of the time frame for them to refer their objection to the court;

(iii) the valuation report on the said land was only ready on 18 September 2002; and

(iv) the delay in filing Form N was inadvertent.

[17] Having heard arguments by learned counsel from both parties and considered the relevant law, the learned judge concluded thus:

> Reverting back to the present case and the grounds preferred supporting the application, with the principles enunciated in the above-mentioned cases in the forefront of my mind I am unable to see how those grounds could go through the filtration of conditions and situations for them to be aptly described as 'special circumstances'.

[18] Further in the judgment the learned judge observed:

> In *Lau Cher Hian* case, on the facts of the case, the Federal Court came to a finding of facts that due to certain slip up by the respondent there was hardship caused to a party who was not in the least at fault. This was not the situation in our present case. On the facts laid before the court I can find no reason to fault the respondent for the inability of the applicant to file Form N on time. It was the applicant themselves who had been guilty of indolence and perhaps indifference too. This conduct of the applicant to my mind had disentitled them to any indulgence that would warrant the court to exercise its discretion to tamper the rigidity of the law.

[19] For the reasons stated above the learned judge dismissed the application with costs.

THE COURT OF APPEAL

[20] Dissatisfied with the decision of the High Court the appellant took the matter to the Court of Appeal.

[21] The same arguments that were canvassed before the High Court were put forward in the appeal by both learned counsel.

[22] The appeal heard by the Court of Appeal started off with the acceptance by both parties that an objection to the award of the land administrator required the submission of Form N to the respondent within six weeks from the date of the award.

[23] The Court of Appeal observed that the court has the discretion to enlarge that period as prescribed by s 38(3)(a) of the Act. It then referred to the cases of *Penang Development Corporation v Collector of Land Revenue & Anor* [1976] 1 MLJ 89 and *Senapi bin Long dan satu yang lain lwn Pentadbir Tanah Daerah, Langkawi, Kedah* [1994] 1 MLJ 459.

[24] The Court of Appeal further observed that for the appellant to succeed it had to establish that there existed special circumstances to warrant the court to exercise its discretion. In other words the onus was on the appellant. The discretion to be exercised by the court was not absolute and unqualified and had to be exercised sparingly.

[25] In upholding the learned judge's finding the Court of Appeal had this to say:

> Having sifted the evidence we were satisfied that the trial judge had not erred in holding that the grounds preferred by the appellants could not be described as special circumstances. Before us the same arguments were ventilated eg the non-notification of the dateline for appeal by the respondent, a commission of a bona fide mistake on its part/ignorance of law, undue hardship to the appellant, and no fault on the part of the appellant.

[26] To the complaint by the appellant that it was not informed by the respondent of the six weeks period to submit Form N the Court of Appeal said that upon perusal of s 16 of the Act, it merely legislated that the land administrator shall prepare and serve on each person interested in such land a notice in Form H. In it would be the written award. Nothing was included within the four walls of s 16 or in Form H that the land administrator was under a duty to inform the appellant of the submission of Form N. That being so the land administrator was blameless as it had complied with all the statutory requirements.

[27] Explaining further the complaint by the appellant, the Court of Appeal had this to say:

> To appreciate the complaint of the appellant a scrutiny of s 38 and Form N would not be inappropriate. With respect we were unable to identify even a single suggestion in that section that it was incumbent upon the land administrator to inform the appellant of the dateline of the impugned Form N. A thorough scrutiny of Form N itself bore the same fruits. The wordings of s 38 and Form N were crystal clear in that the onus was on the appellant to do the needful, and for the land administrator to comply with the directions of the appellant, after having received the completed form.

[28] Further down in the judgment the Court of Appeal said:

> A cursory glance of the provision of s 38(1) as printed in the supplied Form N, whether by an employee of the appellant or a more qualified person, would have alerted that reader of the statutory requirements. Instead here, the appellant was nonchalant, and had preferred to wait for the valuation report, which came on 18 September 2002, about a month after the expiry of the objection date. Either the appellant was just too indolent to read the contents of the form, or after reading it and being overly confident, had ignored it.

[29] Reflecting on some of the main issues submitted by the appellant the Court of Appeal came to the following findings:

(i) there was no confusion on their part that it was the bounden responsibility of the appellant to file the statutory Form N on time ie within six weeks of the receipt of the land administrators' award;

(ii) even though in the course of the appeal attempts were made to convince them that the appellant was unaware of the legal and statutory requirements, that submission was unacceptable. Instead of approaching that 'ignorance of the law' concept in an apologetic and refined manner, the appellant had instead indulged in the blame game;

(iii) the respondent was under no statutory duty to inform the appellant of the filing of Form N and its dateline;

(iv) the respondent was blameless in its conduct, and had in fact undertaken the extra effort of posting the forms to the appellant, but regretfully had received brickbats in return;

(v) there was nothing in the behaviour of the respondent that could be construed as 'inequitable', and which had caused the delay in the filing of that impugned form by the appellant;

(vi) the mere difference of opinion by the government and the appellant's private valuer, as regards the value of the land in the circumstances of this case, was not a special circumstance; and

(vii) the undisguised indolence and nonchalance on the part of the appellant was too overwhelming to deserve even an ounce of the court's sympathy.

[30] Having considered the submissions of both parties in their entirety, the Court of Appeal was unconvinced that the appellant had successfully established a case that deserved the exercise of the court's discretion.

[31] Finally, the appeal was dismissed with costs.

THE APPEAL

[32] As stated earlier in the judgment (see para 3 above), the only question posed for our determination in this appeal is 'whether the non-compliance of the statutory requirements under the Land Acquisition Act 1960 ('the Act') in particular, para 1(1)(b) and para 2(d) of the First Schedule of the Act and art 13(1) of the Federal Constitution by the land administrator in making the award under s 14 of the Act, amounts to special circumstances under s 38(4) of the Act'.

[33] Before us, learned counsel for the appellant submitted that the sum of RM898,500, the award stated in Form H dated 4 July 2002 was not correct as it was based on the market value determined as at 19 February 2002 which was the date mentioned in the government valuation report.

[34] According to learned counsel the correct date for the valuation of the said land should be 11 April 2002 ie the date mentioned in the *Gazette* pursuant to s 8 of the Act.

[35] That being the case it is contended that the award made by the respondent in this matter is contrary to and not in accordance with the statutory requirements of the Act in particular s 12(1) and paras 1(1)(b) and 2(d) of the First Schedule of the Act and as such the respondent is in breach of the duty imposed upon him.

[36] The words in s 12(1), paras 1(1)(b) and 2(d) of the First Schedule of the Act are clear and unambiguous and therefore effect should be given to them.

[37] In support of his submission learned counsel for the appellant referred to the cases of *Foo Loke Ying & Anor v Television Broadcasts Ltd & Ors* [1985] 2 MLJ 35; *Tang Sung Mooi v Too Miew Kim* [1994] 3 MLJ 117; *Chor Phaik Har v Farlim Properties Sdn Bhd* [1994] 3 MLJ 345; *Pemungut Hasil Tanah Daerah Barat Daya (Balik Pulau) Pulau Pinang v Kam Gin Paik & Ors* [1983] 2 MLJ 390; *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v Ong Gaik Kee* [1983] 2 MLJ 35 and *Megat Najmuddin bin Dato Seri (Dr) Megat Khas v Bank Bumiputra (M) Bhd* [2002] 1 MLJ 385.

[38] The other issue raised by learned counsel for the appellant is that as a result of the non-compliance of the Act, the said award would be contrary to art 13 of the Federal Constitution and under its inherent jurisdiction this honourable court can set aside the said award and direct the respondent to conduct a 'full enquiry' pursuant to s 12 of the Act into all aspects of the

A claim to determine the proper market value and quantum of compensation for the land acquired.

DECISION

B **[39]** The question posed for our determination speaks of 'non-compliance of the statutory requirements under the Act'.

[40] The alleged non-compliance is in respect of the valuation report prepared by the Jabatan Perkhidmatan dan Penilaian ('JPPH'), the C government valuer, in which the date for determining the market value of the land to be acquired was stated to be 19 February 2002 instead of 11 April 2002 (the date of *Gazette* under s 8 of the Act).

D **[41]** The proviso to s 12(1) of the Act provides that the land administrator may obtain a written opinion on the value of all scheduled lands from a valuer prior to making an award under s 14.

[42] The written opinion or report provided under the proviso to s 12(1) E only acts as a guidance to the land administrator. What the land administrator is required to do is to make a full enquiry into the value of all scheduled lands and shall as soon as possible thereafter assess the amount of compensation which in his opinion is appropriate before he made an award under s 14(1) of the Act.

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[43] As a matter of fact, the land administrator is not bound to accept the valuation report prepared by the government valuer which merely acts as a guide in determining the award of compensation.

G **[44]** In this case, based on the facts, the award was made on 3 July 2002 and Form H was issued a day later ie 4 July 2002.

[45] Therefore, in our view, the award made by the land administrator was proper and in compliance with paras 1(1)(b), and 2(d) of the First Schedule H of the Act.

[46] It would appear that the appellant's objection here is indeed in respect of the sufficiency of the award.

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[47] Objections as to its sufficiency are permitted as s 37 of the Act allows it, and in this case, on the amount of the compensation.

[48] What the appellant had to do further was to notify the respondent that it had objections and request that the matter be referred to the court. That notifications had to be in a written application and in a particular form ie Form N. Thereafter only shall that completed Form N be forwarded to the court by the land administrator. This is a requirement under s 38(1). A B

[49] The failure to fill in the form, and to send it within the prescribed period of six weeks was a procedural insufficiency which could be rectified conditional upon court's interference vide s 38(4).

[50] In order for the appellant to succeed under s 38(4) it had to establish that there existed special circumstances to warrant the court to exercise that discretion. The onus therefore was on the appellant. C

[51] The discretion to be exercised by the court was not absolute and unqualified and had to be exercised sparingly (see *Sungei Bongkah Estate Sdn Bhd v Pentadbir Tanah Daerah Kuala Muda* [1995] 1 CLJ 400). D

[52] In this case both the High Court and the Court of Appeal agreed that no special circumstances existed and the application for enlargement of time was dismissed. E

[53] Having read and re-read the records before us, we were satisfied that the trial judge and the Court of Appeal had not erred in holding that the grounds preferred by the appellants could not be described as special circumstances. F

[54] We are also of the view that this is not a case where art 13 of the Federal Constitution can be said to be infringed as suggested by the appellant in the question posed. G

[55] Article 13 of the Federal Constitution was raised as an issue in the case of *Keck Seng (M) Bhd v Pentadbir Tanah, Johor Bahru* [1996] 3 CLJ 573.

[56] There the court held (at pp 586–587) as follows: H

> Within the same context, the plaintiff has also contended that it is contrary to art 13(2) of the Federal Constitution to award them the market value of Lot 487, as assessed by the defendant, as at the date of the first notification as the value of Lot 487 has substantially increased by virtue of the 'zone changes' as mentioned earlier. Article 13(2) of the Federal Constitution reads: I

No law shall provide for the compulsory acquisition or use of property without adequate compensation:

> With respect, I cannot see the relevance of raising art 13(2). This article lays down the constitutional standard of an expropriatory law and has no bearing on the issue before me which is whether the market value of Lot 487 should be assessed as at the date of the first notification or the third notification. The Act itself is not being challenged and this article is therefore irrelevant for the purpose of this action. I do not think it is necessary for me to delve further into this (see also *Pemungut Hasil Tanah, Daerah Barat Daya, Pulau Pinang v Ong Gaik Kee* [1983] 2 MLJ 35).

[57] It follows, therefore, that if all the provisions of the Act have been duly complied with and the compensation due is also offered, the land owners cannot complain of any violation of art 13 of the Federal Constitution.

[58] Even assuming for a moment that there was non-compliance of the statutory requirements under the Act in particular para 1(1)(b) and 2(d) of the First Schedule by the land administrator while making the award under s 14, it is our considered opinion that the non-compliance have not resulted in any serious injustice or prejudice to the appellant. The difference in the date of valuation ie from 19 February 2002 to 11 April 2002 is only 52 days. In that short period we do not think that the value of the scheduled land would have increased significantly (see *Lau Kieng Kong & Ors v Minister for Resource Planning & Anor* [1994] 3 MLJ 443).

[59] Any prejudice or injustice, if at all, caused to the appellant is actually the result of their own attitude.

[60] Had the appellant remained vigilant in making the application for enlargement of time, they would have had the opportunity to ventilate their case before the High Court.

[61] But the appellant had chosen to remain nonchalant and treated their right with apathy.

[62] It must be emphasised that this was no ordinary appellant but a sophisticated globe trotting company with the resources to acquire professional advice at the snap of its hypothetical fingers.

[63] What amounts to special circumstances under s 38(4) of the Act have been the subject of various decision of our courts previously. We perceive that this is an area of law that is trite and settled (see *Lau Cher Hian v Collector*

of Land Revenue, Muar [1971] 1 MLJ 96; *Lai Tai v The Collector of Land Revenue* [1960] MLJ 82).

CONCLUSION

[64] Based on the above reasons we are unanimous that the answer to the above question should be in the negative. In the result this appeal is dismissed with costs. We would also order the deposit to be paid to the respondent to account for taxed costs.

[65] My learned brothers, Hashim Yusoff and Zulkifli FCJJ, have seen this judgment in draft and had expressed their agreement with it.

Zulkefli FCJ:

[66] I have read the judgment in draft of the learned Chief Judge, Malaya ('CJM')] and I agree with the views expressed and the decision reached by His Lordship in dismissing the appeal by the appellant. I would like to add in a few words in support of the judgment of the learned CJM as follows:

[67] It is to be noted at the outset that before the High Court and the Court of Appeal the same arguments were ventilated by the appellant in its application for enlargement of time to file objection proceedings under Form N pursuant to s 38(1) of the Land Acquisition Act 1960 ('the Act'). Amongst others, the grounds relied on in its application are the non-notification of the dateline for appeal by the respondent, a commission of a bona fide mistake on the appellant's part, ignorance of law, undue hardship to the appellant and no fault on the part of the appellant.

[68] At the stage of the appeal before us now, it would appear however, that the appellant has abandoned all the grounds proferred before the High Court and the Court of Appeal. Learned counsel for the appellant in the appeal before this court now focused his arguments essentially on the new ground that the award made by the land administrator is contrary to the statutory requirements of the Act and art 13(1) of the Federal Constitution. This is in line with the sole question posed for our determination after the appellant had obtained leave to appeal from the Federal Court on 16 July 2007. To the appellant this ground amounts to special circumstances under s 38(4) of the Act. It is the contention of the appellant that the respondent was in breach of the duty imposed upon him as he did not comply with the materials relevant to the assessment and that the amount of compensation was not

made in accordance with the provisions of s 12(1) of the Act and para 1(1)(b) and para 2(d) of the First Schedule of the Act. Section 12(1) of the Act provides as follows:

> On the date appointed under section 10(1) the Land Administrator shall make full enquiry into the value of all scheduled lands and shall as soon as possible thereafter assess the amount of compensation which in his opinion is appropriate in each case according to the consideration set out in the First Schedule:
>
> Provided that the Land Administrator may obtain a written opinion on the value of all scheduled lands from a valuer prior to making an award under section 14.

[69] Paragraph 1(1)(b) of the First Schedule to the Act states as follows:

> 1 Market Value
>
> (1) For the purposes of this Act the term 'market value' where applied to any scheduled land shall mean the market value of such land -
>
> (a) ...
>
> (b) In any other cases, at that date of the publication in the *Gazette* of the declaration made under section 8.

[70] Paragraph 2(d) of the First Schedule to the Act states as follows:

> 2 Matters to be considered in determining compensation
>
> (a) ...
>
> (b) ...
>
> (c) ...
>
> (d) The damage, if any, sustained or likely to be sustained by the person interested at the time of the Land Administrator taking possession of the land by reasons of the acquisition injuriously affecting his other property whether movable or immovable, in any other manner.

[71] It is the appellant's case that the respondent's award for the said sum of RM898,500 purportedly made under s 12 of the Act is flawed in law. The appellant contended that the said award was wrongly made since it was based on the market value as at 19 February 2002 which was as stated in the government valuation report relied by the respondent. To the appellant in law the market value of the scheduled land should be based on the date under the notice issued by virtue of the provision of s 8 of the Act as published in the Negeri Sembilan Government *Gazette* No 179 which is dated 11 April 2002.

[72] With respect to the above contention of the appellant I am of the view it cannot be said that there was a non-compliance by the respondent of the statutory requirements under the Act in the making of the award. The so called non-compliance as alleged by the appellant is in relation to the valuation report prepared by the Jabatan Perkhidmatan dan Penilaian Harta, the government valuer as relied on by the respondent in which the date in determining the market value of the land to be acquired was given as at 19 February 2002 instead of 11 April 2002, the date of the *Gazette* under s 8 of the Act. On this issue of reliance by the land administrator of the assessment made by the government valuer it is to be noted that the proviso to sub-s 12(1) of the Act states that the respondent as the land administrator may obtain a written opinion on the value of all scheduled lands from a valuer prior to making an award under s 14. I am of the view the written opinion or report provided under the proviso to sub-s 12(1) only acts as a guidance to the land administrator. Under the Act what the land administrator is required to do is to make full enquiry into the value of all scheduled lands and shall as soon as possible thereafter assess the amount of compensation which in his opinion is appropriate before he made an award under s 14(1) of the Act. The land administrator is not bound to accept the valuation report made by the government valuer but just as a guide in determining the award of compensation.

[73] It is my view that if at all there has been a non-compliance by the respondent of the statutory requirements under the Act in making the award under s 14 of the Act, this issue should be taken up and argued at the hearing of the objection of the appellant in the reference to the High Court under s 36 of the Act. In fact on this point the appellant as an aggrieved party has a recourse to state his case in challenging the award of the respondent at that stage of the proceedings by producing its own private valuation report before the court. But this is not the case before us now. The true position in the present case is that the appellant had been out of time in filing its application for objection to the award within six weeks from the date of the land administrator's award was made under s 14 of the Act. The appellant in fact has already failed in the first hurdle of satisfying the High Court and the Court of Appeal of the justification to grant enlargement of time to file objection proceedings under Form N.

[74] For the reasons above stated my answer to the question posed should be in the negative. I would therefore dismiss the appeal with costs and an order be made that the deposit is to be paid to the respondent to account for taxed costs.

Appeal dismissed with costs.

Reported by Andrew Christopher Simon